IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 2078 of 2001

Between:

Gandi Paul Devadas, S/o.Late Samuel, Aged about 50 years,

Occupation: Branch Manager (Under orders of Dismissal),

Sri Visakha Grameena Bank, Munchimput Branch,

Visakhapatnam District,

R/o.1-83-22/1A, Sector-V, M.N.P.Colony,

Visakhapatnam-530017.

..... PETITIONER

AND

1. The Board of Directors (Appellate Authority),

Sri Visakha Grameena Bank, Srikakulam,

Represented by its Chairman.

2. The Chairman and Disciplinary Authority,

Sri Visakha Grameena Bank, Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to call for records pertaining to Proceedings contained in No.DP.220/95-96, Dated: 03-08-1995 issued by Respondent No.2 herein dismissing the Petitioner herein from service and consequential proceedings contained in No.D.P.358, Dated:15-12-2000 issued by the Appellate authority i.e., Respondent No.1 herein confirming the decision of the Disciplinary Authority i.e., Respondent No.2 herein and set them aside as illegal, bad, arbitrary, discriminatory, irrational, illogical, and violative of Articles 14, 16 and 21 of the Constitution of India and consequently direct the Respondents herein to reinstate the Petitioner herein into service as Branch Manager with all consequential benefits and attendant benefits including arrears of salary, seniority and promotion etc., by the issuance of writ, order or direction(s) essentially in the nature of writ of Mandamus, holding the action of the respondents herein in conducting the whole enquiry proceedings as bad, illegal, arbitrary, discriminatory, irrational, illogical and violative of Articles of 14, 16 and 21 of the Constitution of India and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.J.SUDHEER

Counsel for the Respondents:MR. K.SRINIVASA MURTHY

The Court made the following :

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.NO.2078 OF 2001

ORDER:

This writ petition is filed challenging the proceedings in D.P.220/95-96, dated 03-08-1995 issued by the second respondent dismissing the petitioner from service and consequential proceedings in D.P.358, dated 15-12-2000 issued by the appellate authority-first respondent confirming the decision of the Disciplinary Authority-second respondent as illegal and arbitrary and consequently to direct the respondents to reinstate the petitioner into service as Branch Manager with all consequential benefits and attendant benefits including arrears of salary seniority and promotion etc.

The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioner was appointed as an Officer in the respondents-bank through regular selection process in March, 1980 and thereafter, he was promoted as Branch Manager. He was elected as president of Sri Visakha Grameena Bank S.C., S.T., B.C., and Minority Employees Welfare Association, while working as Branch Manager at Munchingput Branch. The petitioner being the president of the said association, represented to the respondent-bank on certain aspects of harassment against the S.C., S.T., B.C., and Minority Employees Welfare Association. A memo dated 17-03-1995 was issued to him seeking explanation regarding certain baseless allegations. Without waiting for the explanation, the respondents-bank issued suspension order on the same day, on which he received memo dated 17-03-1995. However, the petitioner submitted his explanation on 10-05-1995 and filed W.P.No.6832 of 1995 before this Court challenging the suspension order. This Court

directed the respondents to conduct the enquiry within 4 months, failing which suspension stands revoked. Thereafter, the respondents-bank issued a charge sheet dated 27-04-1995 framing 5 charges. Though the charges are baseless, the petitioner submitted his explanation on 12-05-1995. Having not satisfied with the explanation of the petitioner, the respondents-bank appointed an enquiry officer. The enquiry officer conducted the enquiry and submitted his report to the disciplinary authority on

20-07-1995. The disciplinary authority asked the petitioner to submit his representation upon the enquiry report and accordingly the petitioner submitted his representation on

29-07-1995. The second respondent by the impugned proceedings dated 03-08-1995 imposed stoppage of one increment for the charges 3, 4 and 5 and dismissal from service for charge No.1 and charge No.2 was not proved. Thereafter, the petitioner preferred an appeal 25-08-1985 before the appellate authority-first respondent herein and the appellate authority rejected the appeal of the petitioner in its 131st meeting held on 17-03-1996 which was communicated to the petitioner by the second respondent through proceedings dated 24-03-1997. Aggrieved by the order of the second respondent dated 03-08-1995 and consequential proceedings of the appellate authority-first respondent herein dated 24-03-1997, the petitioner preferred W.P.No.14261 of 1997 before this Court. This Court disposed of the writ petition by order dated 06-09-2000 setting aside the order of the appellate authority and remitted back the matter to the appellate authority for fresh disposal and further directed that the second respondent shall not participate in the Board meeting and such board shall not also get influenced by the fact that orders have been passed by the Chairman i.e., the disciplinary authority. In pursuance of the orders of this Court dated 06-09-2000, the Board of Directors met on 15-12-2000 and confirmed the punishment of dismissal imposed by the disciplinary authority. Aggrieved by the same, the present writ petition is filed.

A counter affidavit has been filed by the respondents stating that in pursuance of the orders of this Court dated

06-09-2000 in W.P.No.14261 of 1997, the first respondent consisting of six members, in which the second respondent is not a member, had heard the appeal of the petitioner and passed orders dated 15-12-2000 confirming the order of dismissal from service passed by the second respondent and therefore there are no grounds to with the same.

Learned counsel appearing for the petitioner contended that the documents relied upon by the department in the departmental enquiry have not been given to the petitioner and therefore there is no scope or possibility, which causes not putting forth the defence properly at the time of explanation and enquiry; that the findings of the enquiry officer are based upon no evidence; that the evidence of DW-1 and Ex.P2 which are crucial documents for the defence have not yet been considered by the enquiry officer; that the punishment is disproportionate to the proved misconduct; that the petitioner served the bank with unblemished record of service and therefore he prays to set aside the impugned order.

The ground on which the learned counsel for the petitioner strongly contended that certain documents have not been furnished to the petitioner and therefore the conducting of enquiry itself is vitiated. For that proposition, he relied upon a decision reported in **STATE OF U.P. v SHATRUGHAN LAL & ANR.** , wherein it was held:

> "non-supply of document would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence."

On the other hand, the learned Standing Counsel appearing for the respondents contended that the petitioner had never raised the plea in the appeal that the documents relied upon by the department have not been supplied to him, for the first

time he raised the ground; that after considering the evidence adduced by the department, the enquiry officer rightly came to the correct conclusion holding that the charges have been proved except one charge and the disciplinary authority after considering the relevant material on record imposed the punishment properly and therefore she prays to dismiss the writ petition.

It is well settled that while exercising the power of judicial review, the court is more concerned with the decision making process than the merit of the decision itself. While examining and scrutinizing the decision making process, it becomes inevitable to appreciate the facts of the given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of the facts of the decision maker.

The disciplinary proceedings are held in exercise of the domestic jurisdiction of the employer. The holding of such proceedings, of which an enquiry into the misconduct of the employee is the most important feature, is a precondition to the imposition of any punishment on a public servant. The entire procedure for initiating and concluding disciplinary proceedings is generally governed by the rules having statutory force. The manner and procedure for holding such disciplinary proceedings must be consistent with the principles of natural justice. The standard of proof in a departmental proceeding is not as strict as in a criminal proceeding. Hence, proof of standard is only preponderance or probabilities.

For having committed certain serious irregularities /lapses/misappropriation, a charge sheet dated 27-04-1995 has been issued against the delinquent with the following charges:

> "CHARGE-I:
>
> On 20/03/95, you have deliberately taken Rs.80,000/- from Suspense Account without sanction of vehicle loan application by the appropriate authority, despite clear instructions from the Controlling Authority vide

Lr.No.45/94-95, Dt:07/03/95 against Bank norms and misappropriated the amount. Thus, you have violated lawful instructions of your superiors, failed to keep up the trust reposed on you by the Bank, resorted to misappropriation and abused your official position, thereby caused huge financial loss of Rs.80,000/- to the Bank.

CHARGE-II:

On 07/10/93, a Demand Loan No.MDL.34/93 for Rs.10,000/-was sanctioned to Sri G.Jagannadham against the balance of his RD A/c No.340 and a lien was marked on the relative ledged sheet. You have malafidely paid the proceeds of RD A/c No.340 on 22/11/94 without ensuring the closure of the Demand Loan Account MDL 34/93 and thereby exposed the Bank to grave financial risk.

CHARGE-III:

On 07/01/95, you have taken an advance of Rs.16,000/- from Suspense Account to avail LFC. But LFC was not performed. Despite clear instructions from the Controlling Authority, you have reversed the Suspense advance of Rs.16,000/- only on 18-03-95 without payment of interest @ 18% from the date of availment of advance for L.F.C. and thereby gained undue pecuniary benefit.

CHARGE-4:

On 22/03/95, a Non-Public Business Working Day, you have withdrawn Rs.14,700/- from Suspense Account towards Advance for LFC, and Rs.6,000/- from your own SB Account No.2206 by passing for payment of relative debit voucher/withdrawal dated 22/23-0395 contrary to the instructions contained in Cir.Staff43/87, dt.27-10-87.

CHARGE-5:

As a drawing official you have failed to effect deductions of Demand Loan (Loans sanctioned against NSCs) instalments aggregating of Rs.750/- per month from the Salary &Allowances paid to you since August ’94 although you are clearly advised in the LPC issued by our Narsipatnam Branch. Thus you have acted with utter disregard to Bank’s Procedural safe-guards and against the interests of the Bank.”

For the above charges, the petitioner gave an explanation dated 12-05-1995. Having not satisfied with the explanation given by the petitioner, the disciplinary authority appointed an enquiry officer to conduct regular departmental enquiry.

Accordingly, the enquiry officer conducted a regular departmental enquiry and considering the material on record, he came to the conclusion that the charges 1, 3, 4, and 5 have been proved. Whereas charge No.2 has not been proved. The disciplinary authority, having accepted the report of the enquiry officer, imposed the punishment of dismissal from service in respect of charge No.1 and stoppage of one increment each for the charges No.3 to 5. Thereafter, the petitioner preferred an appeal before the appellate authority. The appellate authority by its order dated 24-03-1995 confirmed the punishment of dismissal as imposed by the disciplinary authority against the petitioner. Challenging the same, the petitioner herein filed W.P.No.14261 of 1997 before this Court and this Court by order dated 06-09-2000 disposed of the writ petition setting aside the order of the appellate Board and the matter was remitted back to the appellate Board for fresh consideration keeping in view the provisions of Regulation 31 of the Staff Service Regulations of Visakha Grameena Bank on the ground that the appellate Board consists of 9 members and disciplinary authority is the Chairman of the appellate Board. In that view of the matter, the presence of the Chairman, who passed the order of dismissal, would have a definite effect on the appellate Board and therefore this Court directed that the appellate Board shall be constituted in accordance with Regulation 32 of the Regulations without the participation of the disciplinary authority. Thereafter, the appellate Board passed the impugned orders dated 15-12-2000 confirming the punishment of dismissal imposed by the disciplinary authority. Since the counsel for the petitioner herein is addressed this Court only with regard to charge No.1, it is unnecessary to refer to the other charges and findings of the enquiry officer in this behalf.

Charge No.1 relates to taking of Rs.80,000/- from the suspense account without sanction of vehicle loan from the appropriate authority, despite clear instructions from the controlling authority and misappropriated the same. Therefore, the writ petitioner violated the lawful instructions of the superiors, failed to keep up the trust

reposed on him by the bank, resorted to misappropriation and abused his official position, thereby caused huge financial loss of Rs.80,000/- to the Bank. The findings of the enquiry officer in this charge read as follows:

> "On careful examination of the documents produced and the depositions made by the witnesses it is found that Sri Paul Devadas CSO (petitioner herein) has drawn Rs.80,000/- from the Suspense a/c on 20-3-95 (Pex4) (Pex5) towards purchase of car without sanction of his controlling authority. As per relevant instructions the Branch Manager is not authorized to draw advance from suspense a/c for the purpose of purchase of vehicle. The vehicle loan applied for by the CSO has not been sanctioned and the CSO has not produced any evidence regarding sanction of the loan and authorization to draw advance from suspense a/c. The contention of the CSO that he has drawn the advance of Rs.80,000/- from suspense a/c based on Telephonic instructions from the District Manager through BM Paderu is not tenable. The District Manager vide his Lr.No.45/75 Dt:7-3-95 (Pex2) has clearly advised the CSO not to disburse any amount from suspense a/c without specific permission. Despite clear instructions from the Controlling authority not to draw advance from suspense account the CSO has drawn the advance of Rs.80,000/- from suspense a/c on 20-3-95, this violated the instructions of the controlling authority and availed advance against the Bank norms even without sanction of the vehicle loan and caused huge financial loss to the Bank and misappropriated the amount.
>
> The charge is proved."

The case of the respondent is that by the letter vide Lr.No.45/94-95, dated 07-03-1995, the District Manager advised the petitioner not to disburse any amount from the Suspense Account without specific permission. But the said document does not specifically indicate about prior written permission. This is significant in view of the fact that on telephonic instructions, the writ petitioner has withdrawn the amount of Rs.80,000/- for the purpose of purchasing a car

at New Delhi. The evidence of DW-1 is relevant, because

DW-1 is the Senior Assistant in the M.D.O. Office, Munchingput who stated that he received a telephonic message from the Paderu Branch about the sanction of car loan from the suspense account. On receipt of telephonic message for the sanction

of car loan, the amount was debited to Suspense Account and cash was drawn by means of demand draft. As evidenced by PWs.2 and 4, it is regular practice in the tribal area branches of receiving telephonic messages regarding sanction of loans pertaining to staff members, leaves, relief arrangements etc. Admittedly, the branch in which the petitioner was working is not equipped with any telephone connection and it is in a remote tribal area. If the evidence of DW-1 is appreciated by the enquiry officer and came to conclusion that the charge is proved, then it would be a different matter. He being a total independent witness, his evidence ought to have been appreciated like that of the evidence of any other witnesses examined in the departmental proceedings. Except stating that his evidence is not tenable, there is no reason or whatsoever given by the enquiry officer as to how his evidence is not acceptable, tenable or unworthy of credence. The entire charge levelled against the delinquent insofar as the defence is concerned, it revolves around the evidence of DW-1. If the evidence of DW-1 is acceptable and trustworthy, then the question of misappropriation or financial loss does not arise, but that evidence has not been appreciated.

After conclusion of the enquiry, the enquiry officer is required to prepare a report, which is generally referred to as the enquiry report. The enquiry reports are sometimes challenged in the courts on the ground of perversity. A finding of perversity which is based on no evidence whatsoever or if it is based on mere suspicion, since “a mere suspicion should not be allowed to take place of proof in a domestic enquiry. The evidential material must be such that it amounts to the guilt of the employee in respect of the charge against him with some degree of diligence. The conclusions must be based

on existing and relevant material. No doubt, mere

non-consideration of some evidence will not consider perversity, but the Court will however interfere if a finding is based on a misreading of the material evidence or is so unreasonable or grossly unjust or not consideration of the defence evidence

which is a vital aspect, that no reasonable person should judicially arrive at that conclusion. While exercising powers of judicial review, the courts cannot embark upon the appreciation of evidence and arrive at a conclusion of its own on the sufficiency of the evidence or on the correctness of the conclusion, which is based on some evidence.

But here it is a case where the entire case of the delinquent is based upon the evidence of DW-1. If the evidence of DW-1 is accepted, then the question of committing some irregularity insofar as charge No.1 is concerned does not arise. That aspect of the case has not been dealt with properly by the enquiry officer, consequently by the disciplinary authority and also by the appellate authority, which has a vital and utmost importance insofar as the defence evidence is concerned. There cannot be any dispute that the evidence of witnesses examined on behalf of the delinquent stands on par with the evidence of witnesses who have examined on behalf of the department. Therefore, the evidence of witnesses examined on behalf of the department as well as the evidence of witnesses examined on behalf of the defence are required to be appreciated by the enquiry officer. Therefore, the learned counsel is right in contending that the enquiry officer has not given any finding either accepting or rejecting the evidence of DW-1. Therefore, it leads to perversity.

It is not a case of financial loss to the bank. If it is a case of misappropriation or criminal breach of trust or causing financial loss to the bank, the delinquent officer would not have entered the particulars of taking loan in the Suspense Account Register. Even one witness i.e., PW-5, who was examined on behalf of the department, confirmed that an amount of Rs.80,000/- was debited to Suspense Account and entered the particulars in the Suspense Account Register. After taking the loan admittedly the writ petitioner purchased a car at New Delhi and submitted all the vouchers and relevant papers to the respondent-bank. There are instances where certain amount has been drawn towards loan from the Suspense Account.

So, in these circumstances, the question of causing financial loss of Rs.80,000/- to the respondent-bank does not arise since the delinquent has to repay that loan amount. These aspects have not been considered by
the appellate authority. Even after remand, the appellate authority observed to the extent that the petitioner misappropriated the amount and misutilised his position.

The punishment of dismissal from service is disproportionate to the proved misconduct. It is well settled that the Court should not interfere with the administrative decision, unless it was illogical or suffers from procedural impropriety or was shocking to the consciousness of the court in the sense it was in defiance of logic or middle standard. At the same time, it is also not disputed that the disciplinary authority in an appeal the appellate authority being fact finding authorities have exclusively power to consider the evidence with a view to maintain the discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. Such discretion has not been exercised by the appellate authority in awarding punishment.

Even though the charge relating to misappropriation causing financial loss to the bank, but in the facts and circumstances of the case the said act of the delinquent even assuming for a moment as taken a loan of Rs.80,000/- from the bank without prior permission, at best it amounts to misconduct. It is not financial loss to the bank since the amount taken is a loan by properly preparing vouchers and made entries in the relevant registers. It is also not a case of misappropriation of funds of the bank in view of the fact that the delinquent has not converted the amount other than the purpose it was allegedly taken by him. Therefore, the imposition of such a major punishment of dismissal from service is disproportionate to the proved misconduct. The petitioner is having impeccable and unblemished record of service of more than 20 years. Such a person should not be dismissed for a misconduct as

alleged under charge No.1, because misappropriation involves conversion to his own use or dishonest to use or dispose of the property in violation of any direction of law or of any legal contract is a necessary ingredient for the misappropriation. If the petitioner has not made the entries in the relevant registers about taking of loan from the Suspense Account for the purchase of car of the bank, then it is a serious irregularity and it amounts to misappropriation. The only thing alleged against the petitioner is that without prior sanction of car loan, the petitioner has drawn the amount for that purpose. The petitioner gave proper explanation stating that on oral instructions from the Paderu Branch received by the neighbouring MDO Office, in which a telephone facility is available, he has withdrawn the amount and after purchasing the car, he submitted all the relevant papers to the bank to show his *bona fides*. If really the amount was not taken for the purpose of car loan, there is no need or necessity for the writ petitioner to submit all the relevant documents to the bank. So, in these circumstances, this Court is of the opinion that the punishment imposed is disproportionate to the proved misconduct and consciousness of the court. For a person who worked for more than 20 years with unblemished record could not be given such a major punishment for the irregularities said to have been committed by him.

Hence, the punishment imposed against the petitioner by the disciplinary authority and confirmed by the appellate authority for charge No.1 is modified to the extent of stoppage of three increments with cumulative effect. Insofar as the findings of the disciplinary authority and the appellate authority on charge Nos.3 to 5 are confirmed.

Accordingly, the writ petition is partly allowed to the extent indicated above. In the circumstances of the case, no order as to costs.

JUSTICE K.C.BHANU

Date:13-07-2005.

YCR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice

On this Wednesday the thirteenth of July Two Thousand and five.

To

1. The Board of Directors (Appellate Authority),

Sri Visakha Grameena Bank, Srikakulam,

Represented by its Chairman.

2. The Chairman and Disciplinary Authority,

Sri Visakha Grameena Bank, Srikakulam.

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